

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 1 Division 22 State Hearing Amendments

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held January 25, 2006, as follows:

January 25, 2006
Office Building # 9
744 P St., Room 104
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on January 25, 2006.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

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CHAPTERS

Manual of Policies and Procedures (MPP) Division 22, (State Hearing and Request for Review); Chapter 22-000 (State Hearing - General); Section 22-000 (State Hearing General); Section 22-001 (Definitions); Section 22-002 (Determination of Time Limits); Section 22-003 (Right to a State Hearing); Section 22-004 (Request for a State Hearing); Section 22-009 (Time Limit on Request for a State Hearing); Section 22-045 (Setting the Hearing); Section 22-049 (The Hearings - General Rules and Procedures); Section 22-050 (Evidence); Section 22-053 (Postponements and Continuance for Additional Evidence); Section 22-054 (Dismissals); Section 22-059 (Communications After Hearing); Section 22-061 (Submission of Proposed Decision/Adoption); Section 22-063 (Notice of Decision); Section 22-064 (Availability of State Hearing Records); Section 22-065 (Rehearing); Section 22-069 (County Welfare Responsibility); Section 22-071 (Adequate Notice); Section 22-072 (Timely Notice - Aid Pending Hearing); Section 22-073 (County Welfare Agency Responsibility Prior to the State Hearing); Section 22-074 (Preliminary Hearing Procedure); Section 22-075 (Dismissal of a Preliminary Hearing); Section 22-076 (Procedure After the Preliminary Hearing); Section 22-077 (Hearing not Held in County Responsible for Aid); Section 22-078 (Compliance with State Hearing Decisions); and Section 22-085 (Authorized Representative).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Welfare and Institutions Code Sections 10950 through 10967 provide authorization and requirements for state hearing provisions regarding public social service programs subject to a state hearing such as CalWORKs, food stamps and Medi-Cal. The state hearing regulations implementing these statutory requirements are found at Manual of Policies and Procedures (MPP) Sections 22-000 et. seq. There have been no recent changes to Welfare and Institutions Code Sections 10950 through 10967. Revisions are being made to MPP Sections 22-000 et seq. to make the state hearing process more efficient and to clarify ambiguous or unclear language.

Current regulations contained in Manual of Policies and Procedures (MPP) Division 22 provide standards and requirements for the administration of state hearings whereby a dissatisfied claimant may obtain an impartial review of a county welfare department (CWD) agency action. The proposed regulations are expected to make the process more efficient and improve the existing regulations used in preparing, scheduling and conducting state hearings.

This review and revision of the state hearing regulations contains many nonsubstantive and technical changes as well as policy decisions.

These provisions provide authority for the Director to designate that a state hearing decision is a precedent decision because it contains a significant legal or policy determination of general application that is likely to recur.

These provisions clarify that there is no jurisdiction through state hearing process in matters involving child custody and child welfare service issues while the child is under the jurisdiction of the juvenile court.

These provisions provide remedies, including the tolling of the period to file for a hearing, the right to a postponement, and the right to aid paid pending, to limited-English-proficient claimants who receive notices of action that do not meet the requirements of MPP Section 21-115.2.

Current regulations provide that if the parties agree or if the Administrative Law Judge determines on his/her own motion, the hearing will proceed only on the jurisdictional issue. These provisions clarify that prior to a hearing, a party may request in writing to the regional Presiding Administrative Law Judge that a hearing be limited to the jurisdictional issue.

Current regulations provide that if a claimant fails to appear for a state hearing, he/she has 10 days to reopen the request for hearing and then following a nonappearance decision, the party has 30 days to request a rehearing. These provisions modify this process by eliminating the 10-day reopening period. Instead, a dismissal decision is immediately issued when the claimant does not attend the hearing. The claimant is given 15 days from receipt of the dismissal decision to request the dismissal decision be set aside. If the dismissal decision is not set aside, the claimant is advised of the right to appeal in Superior Court.

Current regulations set forth certain alternatives for county representation of a case when the claimant resides out of county. These provisions allow the responsible county to appear by telephone when the claimant resides in another county and the state hearing is held in that county of residence.

COST ESTIMATE

1. Costs or Savings to State Agencies: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.
2. Costs to Local Agencies or School Districts: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

LOCAL MANDATE STATEMENT

These regulations impose a mandate upon county welfare departments but not upon school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et. seq. of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553, 10554, 10604, 10952, and 10960, Welfare and Institutions Code. Subject regulations implement and make specific Sections 10051, 10553, 10554, 10605, 10613, 10950, 10951, 10952, 10952.5, 10955, 10956, 10957, 10958.1, 10959, 10960, 10961, 10963, 10965, 10967, 11209, 11265.2, 11265.3, 11323.6, and 11323.8, Welfare and Institutions Code; Sections 6700, 6701, 11425.10, 11425.60, 11430.10(a), and 11435.65, Government Code; 7 CFR 273.15; 45 CFR 205.10; 45 CFR 235.112(c)(2); 45 CFR 255.2(h)(2), .4(j)(1) and 256; and Section 44, Probate Code.

CDSS REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

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